

April 7, 2006

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: Fitchburg Gas and Electric Light Company, D.T.E. 06-28

Dear Secretary Cottrell:

On February 24, 2006, the Fitchburg Gas and Electric Light Company (“Fitchburg” or “Company”) submitted a request for dollar-for-dollar recovery of its bad debt expense for 2005 on a retroactive basis. The Company also seeks dollar-for-dollar recovery of these expenses on a going forward basis through the modification of its default service tariff. On March 30, 2006, the Department of Telecommunications and Energy (“Department”) requested comments on the Company’s filing by April 7, 2006. The Attorney General submits this letter as his comments on Fitchburg’s proposal.

Fitchburg’s request for a change in the way the Department calculates Fitchburg’s bad debt expense would change its Default Service bad debt cost formula. Changes to the formula of a reconciling tariff, including changes in a Department policy that increase rates must be subject to a hearing before the Department under G. L. c. 164, § 94, to set just and reasonable rates. *Consumers Organization For Fair Energy Equity, Inc. v. D.P.U.*, 368 Mass. 599, 606 (1975) (“[fuel tariff] clauses were designed precisely to avoid [§94] proceedings ***except where changes were being proposed in the clauses themselves***) (emphasis added). Once the Department establishes an objective formula and a utility appropriately implements the formula, including any reconciliations, the Department should not change the resulting charges outside the safeguards provided by G. L. c. 164, §§ 76 and 94.¹

¹ When shifting costs between base rates and a reconciling a mechanism, the Company must ensure that its not recovering costs more than once. See *Fitchburg Gas and Electric Light Company*, 440 Mass. 625, 640-641 (2004) (“Ordering an entity to disgorge unlawful profits is not unconstitutional confiscation but rather a lawful responsibility of many administrative agencies, including the department.”)

The Company's reliance on *Fitchburg Gas and Electric Light Company*, 440 Mass. 625 (2004) to achieve a contrary result is misplaced. In that case the Department ordered the return of the wrongful collection of costs. *Id.* at 639 (Department has the power in regulations promulgated under G. L. c. 164, § 76, to correct errors in CGA calculations.) It did not involve a change in Department policy that increased rates. Furthermore, the Company's reliance on *KeySpan Energy Delivery*, D.T.E. 05-66 is similarly misplaced. In that case, the Department allowed an adjustment for bad debt expense as an exogenous cost under a Performance Based Rate Plan. Here, the Company's rate plan does not contain an exogenous cost provision.

The Department sets rates based on a test year cost of service model to determine a just and reasonable rate, as measured by the return. G. L. c. 164, § 94. During a rate proceeding, the Department considers many factors to balance shareholder and customer interests and arrive at an appropriate return. *Fitchburg Gas & Electric Light Co*, D.T.E. 02-24/25, p. 231 (2002) (Fitchburg's return set at the low end of reasonable because of "subpar management performance in terms of regulatory support"). Fitchburg has asked the Department to consider just one cost in isolation on a retroactive basis and order recovery without inquiring into whether the Company has earned an appropriate return for the year. This request is inappropriate and the Department should reject it. If the Company modifies the Default Service formula and increases rates, due process requires that the customers in the Company's service territory receive public notice of this type of proceeding and an adjudicatory hearing. G. L. c. 30A. The Department should grant intervenors the opportunity fully to participate in such a hearing, including discovery and briefs.

The Department should adopt the recommendations in these comments in the best interest of customers.

Sincerely,

Alexander J. Cochis
Assistant Attorney General

cc. Service list